LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 9 1968
JOHN F. DAVIS, CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1968

No. 73

ROBERT NEWTON GARDNER, JR.,
Petitioner,

—v.—

CALIFORNIA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

PETITION FOR CERTIORARI FILED JUNE 3, 1967
CERTIORARI GRANTED MAY 6, 1968

Supreme Court of the United States

OCTOBER TERM, 1968

No. 73

ROBERT NEWTON GARDNER, JR.,

Petitioner,

—v.—

CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

INDEX

	Page
Letter from Robert Newton Gardner, Jr. to Clerk of the Superior Court of the State of California, in and for the County of San Luis Obispo, dated September 17, 1966	1
Petition for writ of mandate or injunction filed September 23, 1966 in the Superior Court	2
Memorandum and order of the Superior Court dated September 26, 1966 refusing to file the petition for writ of mandate or injunction	19
Motion to vacate order denying filing of petition filed October 6, 1966	20
Order granting motion to vacate order, etc., dated October 7, 1966	26
Order for production of patient, dated October 21, 1966	27
Motion for appointment of counsel filed December 6, 1966	28
Order appointing the Public Defender as counsel, dated December 6, 1966	29

Page

Memorandum of decision, J. Timothy I. O'Reilly, dated February 15, 1967 ____ 31

Notice of motion and motion under informa pauperis provision for free transcript of all proceedings had hereof filed March 1, 1967 ____ 32

Order denying motion, dated March 1, 1967 ____ 43

Petition for writ of certiorari directed to the Superior Court of the State of California in and for the County of San Luis Obispo, Case No. 5101, filed March 14, 1967 in the District Court of Appeal of the State of California, Second Appellate District ____ 44

Order of The Court of Appeal of the State of California, Second Appellate District denying the petition for writ of certiorari, dated March 28, 1967 ____ 53

Petition for hearing re: denial of certiorari filed in the Supreme Court of the State of California April 24, 1967 ____ 54

Order of the Supreme Court of the State of California denying hearing after judgment by the Court of Appeal, filed May 10, 1967 ____ 62

Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari, dated May 6, 1968 ____ 63

Name Robert Newton Gardner, Jr.
Box E. A-28381, Los Padres, California
Date September 17, 1966

Clerk of the Court
Superior Court
County Courthouse
San Luis Obispo County
San Luis Obispo, California

5101

Re: In the matter of ROBERT GARDNER on mandamus -vs- H. V. FIELD, et al.

Dear Sir:

I am enclosing an original and one copy of my petition for writ of mandate or injunction for the Court.

Also enclosed is an extra copy marked petitioner's copy. Would you be so kind as to mark that copy as "Received" and affix the number assigned thereto and return to me for my record.

Attached to the above entitled petition is a motion for leave with affidavit to proceed in forma pauperis. I know that I do not have sufficient funds to pay fees for mandamus. In the past however I have had institutional statements show a false high balance. This is intentional in most cases and a failure to carry the necessary bookkeeping forward is just one more of many attempts to roadblock or foreclose proper access to the courts.

It is therefore respectfully requested that upon any statement being submitted by respondents showing a higher balance than allowed for forma pauperis, that it be returned for verification under penalty of perjury with the date of last accounting marked thereon.

Thank you for your courtesy and understanding in this matter.

Respectfully yours,

/s/ Robert Newton Gardner, Jr.

ROBERT NEWTON GARDNER, JR.
A-28381
California Mens Colony
East Facility
Los Padres, California

PETITIONER IN PROPRIA PERSONA

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

Civil No. 5101

[File endorsement omitted in printing]

ROBERT NEWTON GARDNER, JR.,
PETITIONER AND PLAINTIFF

-vs-

H. V. FIELD, Superintendent, California Mens Colony, Los Padres, California; H. A. SCOTT, CC II, California Mens Colony, Los Padres, California; R. R. LUCAS, Prison Records Officer, California Mens Colony, Los Padres, California; SERGEANT D. E. MEYERS, Receiving and Release, California Mens Colony, Los Padres, California; and WALTER DUNBAR, Director of the California Department of Corrections, State of California, RESPONDENTS AND DEFENDANTS

PETITION FOR WRIT OF MANDATE OR INJUNCTION—
Filed September 23, 1966

TO THE HONORABLE PRESIDING JUDGE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN LUIS OBISPO

Photocopy, Original returned to Petitioner 9-27-66)

PETITION FOR WRIT OF MANDAMUS TO COMPEL RESPONDENTS TO ALLOW PETITIONER MEANINGFUL ACCESS TO THE COURTS

The petition of ROBERT NEWTON GARDNER, JR., respectfully shows:

I

This Court has jurisdiction to issue its writ of mandamus under the California Code of Civil Procedure, sections 1103, 1094.5, and section 1084, et seq.; and, this Court has jurisdiction to issue its writ of injunction under the California Code of Civil Procedure, section 525, et seq. Further jurisdiction is conferred upon this Court as to both writs under the Due Process and Equal Protection Clauses of both the California and Federal Constitutions.

II

That your petitioner ROBERT NEWTON GARDNER, JR. a state prisoner presently incarcerated in the California Mens Colony, Los Padres, California, within the jurisdiction of this Court, and as such a prisoner has a federal civil and constitutional right to prepare, present, and prosecute various writs and actions in the California and Federal Courts. That right includes a meaningful access to the courts.

III

That petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law and the relief sought is the proper relief under the special circumstances of this case.

IV

This is a civil complaint seeking a writ of mandamus or injunction to restrain defendants from enforcement of an unconstittuional application of regulations or local custom and to compel defendants to allow petitioner to prepare and present legal documents and to have a meaningful access to the courts.

V

That petitioner has a substantial right to prepare and present writs and other legal actions seeking redress in the various courts, and that petitioner has a constitutional right to a meaningful access to the courts.

VI

That the respondents-defendants, H. V. FIELD, Superintendent, R. R. LUCAS, Prison Records Officer, H. A. SCOTT, CC II, D. E. MEYERS, Receiving and Release Sergeant, each of the California Mens Colony, East Facility, Department of Corrections, Los Padres, California; and WALTER DUNBAR, as Director of the Department of Corrections, State of California, have been duly appointed to, and now holds and enjoys, the offices and positions as above listed.

VII

That it was and is the duty of the said respondents to obey the laws and to respect and enforce the constitutional mandates of both the California and Federal Governments. All State officials upon taking office swear to obey the laws and the constitutions with the Federal Constitution the supreme law of the land. The issues hereinafter presented clearly show that the petitioner has been and is being presently denied his Federal Civil and Constitutional Rights. The wilful and knowing acts of the respondents show a reckless and wanton disregard of the petitioner's federal civil and constitutional rights while the respondents, and each of them, are aware that their acts may constitute federal criminal violations under Title 18, sections 241 and 242.

VIII

That the facts of this case, briefly stated, are as follows:

The petitioner during the past three years has prepared and presented various actions to the courts seeking redress and he has purchased and he has been afforded in forma pauperis various court records, transcripts, sample,

petitions, and the like, from a number of state and federal courts. Moreover, the petitioner has obtained numerous photographic copies of important documents, exhibits, letters, and asserted legal instruments, each of the aforesaid have been obtained with the consent and the authority of the Superintendent in charge of the institution then housing the petitioner. (See Institution Mail Records, Trust Office Records, Court letters, copies of petitioner's letters, and property receipts issued to the petitioner. Each of the above retained by the respondents and not now accessable to the petitioner.)

It is the contention of the petitioner that the records that he has accumulated will show wilful and knowing use of perjury by the prosecution, denial of due process and equal protection of the law in many forms, and a flagrant denial of petitioner's federal civil and constitutional rights. The petitioner has been and is presently attempting to prepare and present a proper writ of habeas corpus on the merits of the above issues.

On August 18, 1966, Judge Leon R. Yankwich, United States District Court, Southern District, Central Division, granted the petitioner leave to prosecute, in forma pauperis and in propria persona, a civil rights action for damages in Civil Case Number 66-1334-LY. At that time the numerous records, exhibits, and the like, as above stated, were referred to as future exhibits available to the court in the matter of the the then and now pending civil complaint, and each exhibit was the lawful property and in the possession of the petitioner.

Several days subsequent to the filing of that complaint the petitioner was transferred, without notice or adequate time to prepare and pack his legal records, from the California Medical Facility, Vacaville, California to the California Mens Colony, Los Padres, California. All of the petitioner's needed records, transcripts, exhibits, and other legal material, so necessary to properly prosecute and sustain his cause, have either been intentionally misdirected, lost, or otherwise denied to the petitioner. The petitioner is informed and believes, and therefore alleges that the respondents have access to and the possession and control of said records, legal material, and the like. More-

over, the respondents have the present ability to produce and to allow the petitioner to retain the records and legal material necessary to prosecute and sustain his cause, and to afford him a meaningful access to the courts as secured to him under both the State and Federal Constitutions.

The petitioner has on each day, allowable by regulation or custom, demanded that he be afforded his needed legal records and legal material and for the past 18 days, notwithstanding said demands, the respondents refused and still continue to refuse, to perform their duty, to wit, the issuance of the rightful, lawful, and necessary legal records and material to afford the petitioner his constitutional right to seek redress and have a meaningful access to the courts.

IX

That petitioner is informed and believes, and therefore alleges, that the illegal and unconstitutional acts of the respondents, and each of them, has been and will continue to be a wilful and intentional action that is a direct result of the petitioner seeking to enforce his federal civil and constitutional rights.

X

That petitioner is presently and will continue to be involved in the pending civil rights action heretofore set forth and also other remedies seeking legal redress. The records, legal material, exhibits, and the like, presently denied petitioner, are needed and necessary to have adequate preparation, presentation, and access to the courts. That many of the items, exhibits, and other instruments, are originals and not replaceable. The denial, loss, destruction, or misdirection of the material will result in irreparable damage to the cause of petitioner.

XI

That it is the duty and responsibility of the California Courts to interpret the law and the Constitutions in the regulation of the internal affairs of the California prison system. Moreover, the petitioner must exhaust state reme-

dies prior to petitioning the federal courts. The petitioner has heretofore shown and set forth facts showing the issuance of the writ is indispensable to the enforcement of the petitioner's rights and the failure to act will result in irreparable damage to the cause of the petitioner.

XII

The petitioner has shown by this his verified petition that:

1. It is the duty of the respondents to perform.
2. The present ability of respondents to comply.
3. Numerous demands have been made by the petitioner.
4. The acts are an abuse of discretion.
5. Irreparable damage will result from the failure of of the court to act.
6. The petitioner has a substantial and constitutional right to prepare and present various writs seeking redress and to have a meaningful access to the Courts.
7. The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.
8. Petitioner has annexed to this petition the writ form required under Rules 56.5 and 201 (f) of the California Rules of Court.
9. The Petitioner has annexed to this petition a proper motion with affidavits for leave to proceed in forma pauperis.
10. It is the direct acts of the respondents that cause petitioner to be unable to present complete records, information, numbers, dates, and any exhibit that may be needed in this petition or in any petition.

WHEREFORE, your petitioner prays that a writ of prohibitory injunction may issue out, under the seal of this Court, directed to the said respondents, H. V. FIELD, Superintendent, R. R. LUCAS, Prison Records Officer, H. A. SCOTT, CC II, D. E. MEYERS, Receiving and Release Sergeant, each of the aforesaid of the California

Mens Colony, East Facility, Los Padres, California, and WALTER DUNBAR, Director of Corrections, State of California, commanding them forthwith to issue and deliver to your petitioner his court records, transcripts, exhibits, legal material, and all property as authorized by the Superintendent of the sending institution, and further restrain respondents from subjecting petitioner to threats, harrassment, and oppression for lawfully seeking to enforce his constitutional right to petition the courts for review.

Petitioner further prays for stay of respondents order, regulation, or custom, and thereby allow petitioner to receive and retain in his possession all legal documents, material, and property as aforesaid pending judgment of this court as it is in the best interest of the public in safeguarding the constitutional rights of the individual citizen.

Moreover, as an alternative, your petitioner prays that there may be issued against the said respondents, and each of them, an alternative writ of mandamus, returnable in 10 days, compelling the respondents to perform the acts as above prayed for or to show cause, including proper service upon petitioner, why they should not do so. That upon final hearing said injunction or mandate be made perpetual, and for such other and further relief as to this Court may seem just in the safeguarding of petitioner's constitutional rights.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
Petitioner in propria persona

[*Duly sworn to by Robert Newton Gardner, Jr. jurat omitted in printing (all in italics)*]

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO
(Court)

No. .....
(To be supplied by Clerk of the Court)

ROBERT N. GARDNER, JR., (PETITIONER)

vs.

H. V. FIELD, Superintendent, California Mens Colony, East Facility, et al. (RESPONDENT)

Petition for Writ of MANDAMUS OR INJUNCTION
(Title of writ)

Name of person in custody:

.....

(If other than petitioner).

Relationship of petitioner to person in custody: .....

.....

INSTRUCTIONS—READ CAREFULLY

Set forth in concise form the answers to each applicable question. If you do not know the answer to any question, you should so state. If necessary, you may finish the answer to a particular question on an additional blank page, but make it clear to which question any such continued answer refers.

You should exercise care to assure that all answers are true and correct. Since the petition contains a verification, the making of a statement which you know is false may result in a conviction for perjury.

Approved by the Judicial Council of California for use under Rules 56.5 and 201 (f) of the California Rules of Court [as adopted effective Jan. 1, 1966].

When the petition is filed with the Superior Court or judge thereof, only the original must be filed unless additional copies are required by local court rules.

When the petition is filed with the District Court of Appeal or justice thereof, an original and three copies must be filed.

When the petition is filed with the Supreme Court or justice thereof, an original and ten copies must be filed.

In addition, the law requires the service of a copy of the petition on the district attorney, city attorney or city prosecutor in certain cases (Pen. Code § 1475, Gov. Code § 72193).

Petitioner should attach all relevant records or documents supporting his claims.

1. ROBERT NEWTON GARDNER, JR. in whose be-
(Name of person in custody)
half the writ is applied for is confined or restrained of his liberty at CALIFORNIA MENS COLONY,
(Place of detention)
EAST FACILITY, LOS PADRES, CALIFORNIA.
by H. V. FIELD, Superintendent

.....

(Name of person or persons having custody—If names not known describe such person or persons)

.....

2. Name and location of court under whose process person is confined:

Superior Court, County of Orange, California

.....

.....

3. Nature of the court proceeding (e.g., criminal case, commitment for narcotics addiction, insanity, or mentally disordered or abnormal sex offender) and the case number, if known, resulting in the confinement:

Possession of Narcotics, violation 11500 H & S Code

.....

.....

4. The date of judgment, order or decree for confinement and its terms:

   Feb. 1960, continuous incarceration since that date.

   .....

5. What plea was entered in the above proceeding? (E.g., guilty, not guilty, not guilty by reason of insanity, nolo contendere, etc.)
   Plea of guilty

6. Check whether trial or hearing was by
   (a) ☐ A jury
   (b) ☒ A judge without a jury

7. Was an appeal taken? No

8. If you answered "yes" to (7), list

   (a) The name of each court to which an appeal was taken:

   i .....
   ii .....
   iii .....

   (b) The result in each such court:

   i .....
   ii .....
   iii .....

   (c) The date of each such result and, if known, citations of any written opinions or orders entered:

   i .....
   ii .....
   iii .....

9. If the answer to (7) was "no" state the reasons for not so appealing:

   At that time no appeal would lie from plea of guilty

   .....

10. State concisely the grounds on which you based your allegation that the imprisonment or detention is illegal:

(a) The judgment of the case or the imprisonment is not in question.

(b) .....

(c) .....

11. State concisely and in the same order the facts which support each of the grounds set in (10):

(a) This is a petition for writ of mandate and the facts and issues are presented in the annexed petition.

(b) .....

(c) .....

12. Have any other applications, petitions or motions been filed or made in regard to the same detention or restraint? yes

13. If you answered "yes" to (12), list with respect to each petition, motion or application:

(a) The specific nature thereof:

i All records, exhibits, past data, and the like involving prior actions have been denied me.

ii .....

iii .....

iv .....

(b) The name and location of the court in which each was filed:

i See 13. (a)

ii .....

iii .....

iv .....

(c) The disposition thereof:

i .....

ii See 13 (a)

iii .....

iv .....

(d) The date of each such disposition:

i .....

ii See 18 (a)

iii .....

iv .....

(e) If known, citations of any written opinions or orders entered pursuant to each such disposition:

i See 18 (a)

ii .....

iii .....

iv .....

14. Has any ground set forth in (10) been presented to this or any other court, state or federal, in any petition, motion or application? No.

15. If you answered "yes" to (14) identify:

(a) Which grounds have been previously presented:

i .....

ii .....

iii .....

(b) The proceedings in which each ground was raised:

i .....

ii .....

iii .....

16. If any ground set forth in (10) has not previously been presented to any court, state or federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) .....

.....

(b) .....

.....

(c) .....

.....

17. In the proceeding resulting in the confinement complained of, was there representation by an attorney at any time during the course of:

(a) The proceedings prior to trial? .....

(b) The trial or hearing? .....

(c) The sentencing or commitment? .....

(d) An appeal? .....

(e) The preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction? .....

.....

18. If you answered "yes" to one or more parts of (17), list the name and address of each such attorney and the proceeding in which he appeared:

(a) .....

.....

(b) .....

.....

(c) .....

.....

19. Is the person in custody presently represented by an attorney in any matter relating to this confinement?

.....

If so, state the attorney's name and address: .....

.....

20. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

This is the proper court to seek the relief prayed for under the circumstances of this case. (See attached petition for mandate) .....

.....

.....

.....

I, the undersigned, say:

I am the petitioner in this action; the above document is true of my own knowledge, except as to matters that are stated in it on my information and belief, and as to those matters I believe it to be true.

Executed on September 17th, 1966 at Los Padres, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Robert Newton Gardner, Jr.
Petitioner in propria persona

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

Civil No. ———

ROBERT NEWTON GARDNER, JR., PETITIONER

- vs -

H. V. FIELD, Superintendent, et al., RESPONDENTS

PETITION FOR WRIT OF MANDATE OR INJUNCTION

PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner ROBERT NEWTON GARDNER, JR. asks leave to file the attached Petition for Writ of Mandate without the prepayment of costs and to proceed in forma pauperis. The petitioner's affidavit in support of this petition is attached hereto.

DATED, September 17th, 1966, Los Padres, California

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner in propria persona

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

Civil No. ———

ROBERT NEWTON GARDNER, JR., PETITIONER

-*vs*-

H. V. FIELD, Superintendent, et al., RESPONDENTS

PETITION FOR WRIT OF MANDATE OR INJUNCTION

AFFIDAVIT

AFFIDAVIT IN SUPPORT OF PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

I, ROBERT NEWTON GARDNER, JR., being aware of the penalty of perjury and according to law, depose and say that I am the petitioner in the above entitled cause and, in support of my application for leave to proceed without being required to prepay costs and fees, state:

1. I am a citizen of the United States and California.
2. Because of my poverty I am unable to pay the cost of said cause.
3. I am unable to give security for same.
4. I believe I am entitled to the redress and relief that I seek in said cause.
5. I am a prisoner confined in the California State Prison system and have been so confined for over the past six years.
6. The nature of said cause is briefly stated as follows:

   I have been and I am presently being denied my legal records, transcripts, exhibits, and property,

necessary to prepare and present petitions seeking redress and as a result thereof I am being denied a meaningful access to the courts. This is a civil action requesting writ of mandamus or injunction against those responsible.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner and affiant

I, the undersigned, say:

I am the petitioner in this action; the above document is true of my own knowledge, except as to matters that are stated in it on my information and belief, and as to those matters I believe it to be true.

Executed on September 17th, 1966, Los Padres, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.

[Affidavit of Service by Mail (omitted in printing)]

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

No. 5101

[File endorsement omitted in printing]

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.,
For Writ of Habeas Corpus

MEMORANDUM—September 26, 1966

Petitioner seeks Habeas Corpus.

The petition is not on a form approved by the Judicial Council.

Such forms are free for the asking at the institution in which the petitioner is detained.

Failure to file a petition seeking relief with respect to a petitioner's detention on a form approved by the Judicial Council is grounds for the Clerk refusing to file the petition. (California Rules of Court, Sections 201 (f) and (g).)

The Clerk is ordered to refuse filing to the petition forwarded by petitioner, and to return said petition to the petitioner with a copy of this Memorandum.

If and when a petition is filed on a form approved by the Judicial Council, the Court will give it such consideration as its allegations may require.

DATED: September 26, 1966.

/s/ Richard F. Harris
Judge of the Superior Court

Sept. 27, 1966. Copy mailed to the Petitioner.

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

No. 5101

[File endorsement omitted in printing]

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.,
For Writ of Habeas Corpus or Mandate

MOTION TO VACATE ORDER DENYING FILING OF PETITION

The petitioner ROBERT NEWTON GARDNER, JR. respectfully moves this Court for an Order to vacate its previous Order to refuse filing of the above entitled and numbered petition, said Order entered September 26, 1966, and rendered by the Honorable Richard F. Harris, Judge of the Superior Court.

The Motion herein of the petitioner and his reasons for granting said motion are as follows:

I

This Court has jurisdiction herein to grant petitioner's motion to vacate under California Code of Civil Procedure, section 663, and further authority as stated in the case of *In Re Robinson* (1952), 112 C.A. 2d 246, which clarifies the circumstances and procedure in the instant case.

II

The facts of this case, briefly stated, are as follows:

1. The petitioner presented the above entitled and numbered petition to this Court on September 17, 1966, and the petition was entitled Petition for Writ of Mandamus or Prohibitory Injunction.

2. The Clerk of the Court filed that petition as it was presented on September 23, 1966.

3. On September 26, 1966, the Honorable Richard F. Harris termed that petition a writ of habeas corpus and

issued a Memorandum Order, in case number 5101, that the Clerk is ordered to refuse filing the petition and return said petition to the petitioner.

4. The full wording of the Memorandum Order as above set forth is as follows:

"Petitioner seeks Habeas Corpus.

The petition is not on a form approved by the Judicial Council.

Such forms are free for the asking at the institution in which the petitioner is detained.

Failure to file a petition seeking relief with respect to a petitioner's detention on a form approved by the Judicial Council is grounds for the Clerk refusing to file the petition. (California Rules of Court, Sections 201 (f) and (g).)

The Clerk is ordered to refuse filing to the petition forwarded by petitioner, and to return said petition to the petitioner with a copy of this Memorandum.

If and when a petition is filed on a form approved by the Judicial Council, the Court will give it such consideration as its allegations may require.

DATED: September 26, 1966."

III

It must be assumed that the Court read the petition and, therefore, the petitioner must state that the Order of the Court is erroneous and based on its own false statements, and as such the proceeding had in this matter was sham.

IV

Reason for the statements made in paragraph III are as follows:

1. On Page 8, lines 5 to 7 of the petition number 5101 the petitioner stated clearly that, "Petitioner has annexed to this petition the writ form required under Rules 56.5 and 201 (f) of the California Rules of Court.

2. On pages 10 to 14 of that petition the writ form as above stated was incorporated.

3. The reasons showing why the petitioner was unable to fully answer all questions on that writ form were fully set forth in the Supplement to that Form.

4. It is clear that the Judicial Council in its annual report to the Governor in 1964 wherein the Judicial Council set forth the reasons and the intent behind the adapted Rules 56.5 and 201 (f), that the writ form was to be supplemented if need be and that the form was for obtaining proper information, but did not restrict the supplementing the new writ form.

5. Special circumstances were set forth in the petition showing the necessity to supplement the writ form under 201 (f).

V

It has come to the attention of the petitioner since the presentation of his petition, and it is common knowledge among the prisoners of this institution and it is now the contention of the petitioner, that collusion between this Court and the Institution exists in the wilful and knowing denial of a meaningful access to the Courts, among other constitutional rights, and a wanton, malicious, and sytematic policy to oppress and frustrate all attempts by prisoners in this institution that seek to enforce their federal civil and constitutional rights.

Upon request the petitioner will support the above statement with numerous witnesses, documents, depositions, and the like.

VI

The Court was and or now is aware that the summary order denying petitioner the right to file his petition was based and grounded on the court's own false statements. Further, that the Order is a non-appealable order, and as such, deprives the petitioner of the right to seek an appeal wherein a fair and meaningful adjudication may be had in the matter. Moreover, it is the contention of the petitioner that the Court was and is aware of the above stated, and that it is done to frustrate the legal efforts of prisoners incarcerated in the California Mens Colony and that it is a wilful and intentional act to aid

and abet the illegal acts of the officials of this institution in their wanton, malicious, and sytematic policy under local custom to deprive this petitioner, as well as other prisoners seeking a meaningful access to the courts, of their federal Civil and Constitutional Rights.

VII

Petitioner is informed and believes, and therefore alleges, that the present motion to vacate is the proper avenue to employ under the circumstances of this case; that he as a state prisoner has complete freedom to seek remedies to set aside his conviction or obtain freedom from imprisonment; that it is an abuse of discretion for officials or prison authorities to utilize prison rules or local customs in such a way as to deny any inmate of the full opportunity to communicate with an attorney or to prepare and present and have meaningful access to any court in which he wishes to file any petition whatever that purports to seek some remedy of relief from illegal restraint, and that such an abuse of discretion deprives a state prisoner of rights secured under the Fourteenth Amendment of the Constitution of the United States of America.

VIII

WHEREFORE, petitioner respectfully prays that the Court reconsider its previous Memorandum and Order entered September 26, 1966, wherein the Court ordered the Clerk not to file the petition for writ of habeas corpus or mandamus as previously stated, and upon the court's reconsideration of that order that the court vacate its order and issue a new order compelling the Clerk to file the petition number 5101 and thereby allow the court to consider the allegations and issues presented in that petition on its merits.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
Petitioner and Movant in pro per

[*Duly sworn to by Robert Newton Gardner, Jr. jurat omitted in printing (all in italics)*]

BRIEF OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO VACATE ORDER DENYING FILING OF PETITION

One of California's leading authority on State Law, Bernard Witkin, states:

> ". . . and he (convict) has complete freedom to seek remedies to set aside his conviction or obtain freedom from imprisonment. (In Re Robinson (1952), 112 C.A. 2d 246)" *B. E. Witkin, California Procedure*, vol. 2, page 1025.

Bernard Witkin further states:

That a motion to vacate under California Code of Civil Procedure, section 663, is the proper attack upon a non-appealable order effecting the substantive rights of a party, and as such, upon denial of the motion to vacate, changes the non-appealable order to an appealable order. *B. E. Witkin, California Procedure*, Vol. 3, pages 2550 to 2560, (1954) Extraordinary writs.

> ". . . If officials and authorities of any State Prison in enforcing prison rules had in any suppressed an inmates rights under the Fourteenth Amendment to the United States Constitution, inmate is entitled to his discharge upon his petition for writ of habeas corpus."
>
> *Cochran* v. *Kansas*, 316 U.S. 255, 86 L. Ed. 1453
>
> *Billeaux* v. *Holmes*, 177 Fed. Supp. 361
>
> "It is an abuse of discretion for officials or prison authorities to utilize prison rules, regulation, or local custom, to deny any inmate of the full opportunity to communicate with friends, or an attorney, or to file any kind of petition in any court whatever that purports to seek some remedy or relief from illegal restraint."
>
> *In Re: Ferguson*, 55 A.C. 667
>
> *Proviano* v. *United States*, 353 U.S. 53-62
>
> "Access to the Courts is effectively denied by the preventing of the preparation of legal documents, as it is by the preventing of their filing."

Ex Parte Hull, 312 U.S. 546, 549

In Re Robinson, 112 Cal. App. 2d at p. 629

". . . If the Judge, having abandoned his judicial role, committed acts, or authoritatively directed the commission of acts, which ordinarily are related to prison official or police activity as opposed to judicial activity, the cloak of immunity should not protect him. The title of the office, quasi-judicial or even judicial, does not, of itself, immunize the officer from responsibility for unlawful acts that cannot be said to constitute an integral part of the judicial process." From the Original Transcript of *Robichaud* v. *Ronan*, 10-8-65 C.A. 9th. Opinion by Judge Ely. 352 F.2d ——, B.N.A. 34 Law Week 2210.

"When a plaintiff asserts that the defendants are depriving him of rights protected by the Constitution or Amendments, it is immaterial whether defendants conduct is legal or illegal as a matter of state law."

Monroe v. *Pape*, 365 U.S. 167

Fourteenth Amendment Rights have recently been fully incorporated in violation of Federal Civil and Constitutional Rights as proscribed in 42 U.S.C. 1983 and 1985 and the criminal conterpart, Title 18 U.S.C. 241 and 242.

U.S. v. *Price*, No. 65, B.N.A. 34 Law Week 4313

U. S. v. *Guest*, No. 59 & 60, B.N.A. 34 Law Week 4323

For the reasons heretofore stated and in accordance with the points and authorities hereinabove cited, it is requested that the Court vacate the order of September 26, 1966, and grant the prayer as previously prayed for in this motion.

DATED: 29 September 1966 at Los Padres, California

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
Petitioner-movant in pro per

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

No. 5101

[File endorsement omitted in printing]

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.,
For Writ of Habeas Corpus

ORDER—October 7, 1966

The petitioner's request that the Court Vacate the Order Denying Filing of the Petition is GRANTED.

This matter is ordered set for hearing on Monday, October 17, 1966, at 2:00 o'clock p.m.

DATED: October 7, 1966.

/s/ Richard F. Harris
Judge of the Superior Court

Copy mailed to Petitioner.

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

No. 5101

[File endorsement omitted in printing]

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.,
For Writ of Habeas Corpus

ORDER FOR PRODUCTION OF PATIENT—October 21, 1966

TO: H. V. FIELD, Superintendent, California Men's Colony, Los Padres, California.

An Order being made this day by me that ROBERT NEWTON GARDNER, Jr., be produced in this Court for further proceedings in the Matter of the Application of ROBERT NEWTON GARDNER, Jr. For Writ of Habeas Corpus.

YOU ARE COMMANDED to deliver him into the custody of the bailiff of the Court at 9:30 a.m. on the 20th day of December, 1966, Department II, Court House Annex, San Luis Obispo, California.

DATED: this 21 day of October, 1966.

/s/ Timothy I. O'Reilly
Judge of the Said Court

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

Habeas Corpus Case No. 5101

[File endorsement omitted in printing]

ROBERT NEWTON GARDNER, JR., PETITIONER

- *vs* -

HAROLD V. FIELD, Superintendent, California Mens Colony—East, Los Padres, California, RESPONDENT

MOTION FOR THE APPOINTMENT OF COUNSEL—
Filed December 6, 1966

TO THE HONORABLE TIMOTHY I. O'REILLY, JUDGE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN LUIS OBISPO:

Comes now the Movant, ROBERT NEWTON GARDNER, JR., in propria persona, and moves the Honorable Court to appoint counsel to represent him in the above entitled and numbered habeas corpus proceeding presently pending in this Court under the authority of the provisions of the California Penal Code, Section 1241. An affidavit in support of this motion is attached hereto.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Movant in propria persona

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

Case No. 5101

[File endorsement omitted in printing]

ROBERT NEWTON GARDNER, JR., PETITIONER

- *vs* -

HAROLD V. FIELD, Superintendent, California Mens Colony—East, Los Padres, California, RESPONDENT

AFFIDAVIT

AFFIDAVIT IN SUPPORT OF MOTION FOR THE APPOINTMENT OF COUNSEL—Filed December 6, 1966

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

ROBERT NEWTON GARDNER, JR., under penalty of perjury, deposes and says:

That he is the petitioner in the above entitled petition for writ of habeas corpus.

That he is a citizen of the United States and a resident of the State of California, and of lawful age.

That he has a just and lawful cause for said action and verily believes that he is entitled to the hearing and the relief prayed for in his petition for writ of habeas corpus.

That said action is brought in good faith, but that he is a poor person and does not possess sufficient means to pay the services of legal counsel in representing him in said action. That he is a layman unskilled in law and does not possess the legal knowledge and skill necessary to litigate the action without legal counsel.

That officials of the institution incarcerating petitioner have confiscated his law books, rules of court, formats, and all the important items of a legal nature, to foreclose petitioner in his attempts to seek legal redress in propria persona. That numerous law books have been removed and ordered destroyed from the prison library.

WHEREFORE, your petitioner respectfully prays that the Honorable Court will appoint counsel to represent him in the matter presently before this Court and thereby afford petitioner a meaningful presentation and hearing of his cause.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner in propria persona

[*Duly sworn to by Robert Newton Gardner, Jr. jurat omitted in printing (all in italics)*]

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

Tuesday, December 6, 1966

Present: Hon. Timothy I. O'Reilly Judge Presiding, Department II

No. 5101

ROBERT NEWTON GARDNER, JR., PLAINTIFF

vs.

HAROLD V. FIELD, etc., DEFENDANT

ORDER—December 6, 1966

It is hereby ordered that the Public Defender is appointed as counsel for Robert Newton Gardner, the Petitioner herein.

MW

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

No. 5101

[File endorsement omitted in printing]

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.,
For a Writ of Habeas Corpus

MEMORANDUM OF DECISION—February 15, 1967

The above entitled matters were ordered consolidated for hearing.

Hearing came on the first day of February, 1967, in Department I of the Superior Court of San Luis Obispo, Judge Timothy I. O'Reilly presiding.

Prior to the taking of evidence the Court ruled that the Petition in No. 5101, although labeled a Petition for Writ of Mandamus or Injunction, was and is in fact a Petition for a Writ of Habeas Corpus.

The Court took evidence, both oral and documentary. At the conclusion of the taking of evidence, the matter was submitted with authorities from the petitioner and the respondents.

The Court having reviewed the evidence and having read the authorities now rules as follows:

That the Petitions be denied and the Writs dissolved. The Court specifically finds that:

1. There was no invasion of the constitutional rights of the petitioner;

2. That there occurred no impediment to his access to the courts;

3. That he had reasonable access to the courts and reasonable access to law books and other legal materials sufficient to meet the requirements of the law.

Dated this 15th day of February, 1967.

/s/ Timothy I. O'Reilly
TIMOTHY I. O'REILLY
Judge of the Superior Court
Department I

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

No. 5101

[File endorsement omitted in printing]

Received, Feb. 27, 1967, Ruth Warnken, County Clerk,
By [Illegible], Deputy

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.
For a Writ of Habeas Corpus

NOTICE OF MOTION UNDER INFORMA PAUPERIS PROVISION FOR FREE TRANSCRIPT OF ALL PROCEEDINGS HAD HEREOF
—Filed March 1, 1967

TO: THE DISTRICT ATTORNEY OF THE COUNTY OF SAN LUIS OBISPO, COUNTY COURTHOUSE ANNEX, SAN LUIS OBISPO, CALIFORNIA.

Please take notice that the undersigned will bring this attached Motion Under Informa Pauperis Provision For Free Transcript Of All Proceedings Had Hereof before the Honorable Timothy I. O'Reilly, Judge of the Superior Court, Department I, County of San Luis Obispo, Courthouse Annex, San Luis Obispo, State of California, on March 6, 1967, at 10:00 a.m. of that day or as soon thereafter as counsel may be heard.

DATED: February 23, 1967, at Los Padres, California.

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner in propria persona

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

No. 5101

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.
For a Writ of Habeas Corpus

MOTION UNDER INFORMA PAUPERIS PROVISION FOR FREE TRANSCRIPT OF ALL PROCEEDINGS HAD HEREOF

TO: THE HONORABLE TIMOTHY I. O'REILLY, JUDGE OF THE SUPERIOR COURT, DEPARTMENT I, COUNTY OF SAN LUIS OBISPO, COURTHOUSE ANNEX, SAN LUIS OBISPO, CALIFORNIA.

Comes now, ROBERT NEWTON GARDNER, JR., the petitioner in the above entitled cause, and moves the Honorable Court for an Order allowing him to obtain from the Clerk of the Court without the prepayment of any fees required therefor, the following portions of the record, proceedings, exhibits and evidence to be contained in the record for review in the Supreme Court of the State of California by avenue of Certiorari or Habeas Corpus:

1. All pleadings, motions, memoranda and affidavits in support thereof as presented by petitioner and respondent.
2. All exhibits presented by respondent.
3. Clerk's Minutes with docket entries of all actions prior to and during hearing of February 1, 1967.
4. The Order and Judgment of the Court.
5. The complete record of all the proceedings, both oral testimony and documentary evidence with any accompanying exhibits from the date of filing of original petition, September 17, 1966, to an including the Order of this Court regarding the instant Motion Under Informa Pauperis Provision for Free Transcript of All Proceedings Had Hereof.

The ground and reason upon which this Motion is based is that movant-petitioner has no funds, nor property, real or otherwise, with which to pay the costs of the preparation of said transcript and that such record is necessary as exhibits and as reference to the full hearing had in the matter, and essential to petitioner as reference in the aid of the preparation for a Writ of *Certiorari* or *Habeas Corpus* which he is desirous of filing with the Clerk of the Supreme Court of the State of California.

The Motion is based upon the Brief of Points and Authorities and Informa Pauperis Affidavit of petitioner, which is annexed hereto.

DATED: February 23, 1967 at Los Padres, California.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Movant in propria persona

ROBERT NEWTON GARDNER, JR.
A-28381
California Mens Colony-East
Los Padres, California 93401
Petitioner in propria persona

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

No. 5101

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.
For a Writ of Habeas Corpus

BRIEF OF POINTS AND AUTHORITIES

REASONS FOR GRANTING MOTION

On September 17, 1966, petitioner presented to this Court his Petition for Writ of Mandamus or Injunction, No. 5101. On October 30, 1966, petitioner presented his Petition for Writ of Habeas Corpus, No. 5170.

Upon motion by petitioner the above entitled matters were ordered consolidated for hearing. After several prehearing actions and continuances the hearing came on the first day of February, 1967, in Department I of the Superior Court of San Luis Obispo, Judge Timothy I. O'Reilly presiding.

Prior to the taking of evidence the Court ruled that the Petition in No. 5101, although labeled a Petition for Writ of Mandamus or Injunction, was and is in fact a Petition for a Writ of Habeas Corpus.

During the hearing the Court took evidence, both oral and documentary. At the conclusion of the taking of evidence, the matter was submitted with authorities from the petitioner and the respondents.

The Court after reviewing the evidence and having read the authorities ruled adversely to petitioner on February 15, 1967. It is assumed by petitioner, due to state-

ments made by the Court during hearing, that basis for the court's ruling was the State Supreme Court Case *In re Chessman*, 44 Cal. 2d 23.

Petitioner does not complain of the full hearing accorded him by this Honorable Court. The hearing was a full and fair hearing and it is the contention of the petitioner that the evidence adduced at that hearing will substantiate the claims of petitioner.

Petitioner contends that while this court's ruling may comply with *In re Chessman*, it is not in accord with the recent decisions and trend of the Supreme Court of the United States in that Court's expanded scope as to the rights secured by the Fourteenth Amendment.

The transcript of the above mentioned hearing is necessary to petitioner so that he may properly present his claims to the California Supreme Court and to allow that Court to review the evidence adduced and the entire record so that Court may properly adjudicate the issues and review this court's decisions regarding the federal questions presented by the petitioner.

In addition to requesting a review of the entire record of all proceedings had in the above entitled case, petitioner will allege as follows:

1. That the present interpretations of the *In re Chessman* case now causes an abridgment of petitioner's federally protected constitutional rights and as such should be overruled.

2. That there was and is now an invasion of the federal constitutional rights of the petitioner.

3. That there was and is now a flagrant discrimination causing a denial of equal privileges to state prisoners who seek to lawfully petition the courts.

4. That State prisoners have been and are now being punished for exercising or attempting to exercise their right to lawfully seek review of their case or to petition the courts.

5. That the acts of respondents as spelled out in the hearing show an infringement upon petitioner's right of access to the courts.

6. That the record will show that petitioner does not have meaningful access to the courts and reasonable ac-

cess to law books, rules, and other legal material sufficient to meet the requirements of the Fourteenth Amendment of the Constitution of the United States.

BRIEF OF POINTS AND AUTHORITIES

Proposition of Law

The Equal Protection Clause of the Fourteenth Amendment Requires That Indigent Defendants and State Prisoners Be Afforded the Same Opportunity to Review Their Conviction or Collateral Proceedings As Persons Who Have Money to Buy the Record or Transcript of the Trial or Proceeding at Issue.

Argument

It cannot be said that the State of California has any right to reserve, or withhold from an indigent defendant in a criminal case or state prisoner in collateral or post-conviction proceeding, transcripts which would tend to exculpate the alleged criminality of such defendant or tend to prove post-conviction constitutional deprivations of state prisoner.

This doctrine is clearly defined by the United States Supreme Court. A summary of that doctrine will be presented hereinafter:

In *Griffin* v. *Illinois*, 351 U.S. 12, the Court held that a State with an appellate system which made available trial transcripts to those who could afford them was constitutionally required to provide "means of affording adequate and effective appellate review to indigent defendants." Id., at 20. The Court held that "destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts." Id., at 19.

In *Burns* v. *Ohio*, 360 U.S. 252, involving a $20 fee for filing a motion for leave to appeal a felony conviction to the Supreme Court of Ohio, the United States Supreme Court held that "once the State chooses to establish appellate review in criminal cases, it may not foreclose in-

digents from access to any phase of that procedure because of their poverty . . ." "This principle is no less applicable where the State has afforded an indigent defendant access to the first phase of its appellate procedure but has effectively foreclosed access to the second phase of that procedure solely because of his indigency." Id., at 257.

In *Smith* v. *Bennett*, 365 U.S. 708, the Supreme Court made clear that these principles were not to be limited to direct appeals from criminal convictions, but extended alike to State post-conviction proceedings. "Respecting the State's grant of a right to test their detention," the Court said, "the Fourteenth Amendment weighs the interests of rich and poor criminals in equal scale, and its hand extends as far to each." Id., 714.

In *Eskridge* v. *Washington Prison Board*, 357 U.S. 214, the Supreme Court held invalid a provision of Washington's criminal appellate system which conferred upon the trial judge the power to withhold a trial transcript from an indigent upon the finding that "justice would not be promoted . . . in that defendant has been accorded a fair and impartial trial, and in the court's opinion no grave or prejudicial errors occurred therein." Id., at 215. There it was said that "the conclusion of the trial judge that there was no reversible error in the trial cannot be an adequate substitute for the right to full appellate review available to all defendants in Washington who can afford the expense of a transcript." Id., at 216. *In Eskridge* the Supreme Court held constitutionally invalid the above provision which permitted a trial judge to prevent an indigent from taking an effective appeal.

In *Lawrence Long* v. *District Court of Iowa*, No. 77, October Term, 1966, decided Dec. 5, 1966, 35 LW 4046 (BNA United States Law Week), the latest and controlling case of the U.S. Supreme Court involving transcripts of habeas corpus proceedings. The Court held in *Long* that to interpose any financial consideration between an indigent prisoner of the State and his exercise of a state right to sue for his liberty or the protection of his constitutional rights is to deny that prisoner the equal protection of the laws. The Court further held that . . . "We

specifically held in *Smith* that having established a post-conviction procedure, a State cannot condition its availability to an indigent upon any financial consideration." In *Long*, the petitioner sought habeas corpus in the District Court of Iowa, and after an evidentiary hearing that court found against the petitioner on the facts of his claims. Petitioner thereupon applied to the District Court for free transcripts of the proceedings to allow him to petition the Supreme Court of Iowa for a review of that proceeding and the finding by the District Court. The District Court denied the motion for free transcripts and upon Certiorari the United States Supreme Court reversed and remanded.

In the instant matter presently before the bar, petitioner's cause falls clearly within the area staked out by the Supreme Court's decisions in *Griffin*, *Burns*, *Smith*, *Eskridge*, and *Long*. To be sure, petitioner's case does not involve, as did *Griffin*, a direct appeal from a criminal conviction, but *Smith* makes it clear that the *Griffin* principle also applies to state post-conviction proceedings, and *Burns* leaves no doubt that the same principle applies even though the State has already provided one review on the merits. And *Long* v. *Iowa* clearly shows petitioner's right to the transcripts of the hearing had in the present habeas corpus case and the *Long* case should be controlling here.

Section 1473 of the California Penal Code confers upon the petitioner the *right* to prosecute a petition for writ of habeas corpus. To adequately present a *prima facie* case to the satisfaction of the California Supreme Court to which petitioner will present his petition seeking review of the hearing had in this court, it is necessary that petitioner be afforded the court records in question, the transcripts as spelled out on page 2, line 28 to and including page 3, line 7 of Motion herein, for those transcripts will be necessary to petitioner in the proper preparation of his petition seeking review of the hearing had in the instant case. In addition, the transcripts will be necessary to prove the petitioner's allegations of constitutional deprivations spelled out during that hearing and

to substantiate the allegations and cause of petitioner by the evidence adduced at that hearing.

To deny petitioner these transcripts, is in effect, to deny him the *right* to prosecute a petition for writ of habeas corpus or certiorari and to seek review from any adverse habeas corpus hearing and judgment or order. To hold otherwise would allow only such petitioners who are able to pay for transcripts the right to prosecute a writ of habeas corpus and seek review from any adverse opinion after hearing, and to deny the same right to indigent petitioners regardless as to merit. "Where a right is conferred by law everything necessary for its protection is also conferred." *People* v. *McGorvey*, 61 C.A. 2d 557 at 563.

The petitioner having the right to the writ of certiorari and habeas corpus, then has the right to establish a *prima facie* cause for the issuance of such writ. In the case at bar, the petitioner will be unable to do so unless he is furnished with the transcript of all proceedings had in the matter as requested on pages 2 and 3 of the Motion herein.

CONCLUSION

Premises considered it is respectfully urged that the Motion Under Informa Pauperis Provision For Free Transcript Of All Proceedings Had Hereof be granted and that the respective court officers be ordered to prepare the record thereof which is needed by the petitioner as heretofore set forth.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Movant-petitioner in pro per

[*Duly sworn to by Robert Newton Gardner, Jr. jurat omitted in printing (all in italics)*]

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

No. 5101

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.
For a Writ of Habeas Corpus

AFFIDAVIT

IN FORMA PAUPERIS AFFIDAVIT
IN SUPPORT OF MOTION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

I, ROBERT NEWTON GARDNER, JR., being aware of the penalty of perjury and according to law, depose and say that I am the petitioner in the above entitled cause and, in support of my Motion Under Informa Pauperis Provision For Free Transcript Of All Proceedings Had Hereof, state:

1. I am a citizen of the United States and California.
2. Because of my poverty I am unable to pay the cost of the transcripts of proceedings necessary to my cause.
3. I am unable to give security for same and I presently have less than $10.00 in cash available to me.
4. I believe I am entitled to the redress and relief that I seek in said cause.
5. I am a prisoner confined in the California State Prison system and have been so confined for over the past seven years.
6. The nature of said cause is briefly stated as follows:

That after full evidentiary hearing the court ruled against petitioner, not on the facts of his claims, but as to the interpretation of rights secured by the

Fourteenth Amendment. Petitioner seeks review of that hearing and the federal questions therein presented. Petitioner requires the transcript of that hearing to properly prepare and present his claims to the State Supreme Court and then, if necessary, to the United States Supreme Court on Certiorari as the interpretation and decisions made by this court as to the federal issues during the hearing and the order denying petition is in itself a federal question.

WHEREFORE, petitioner respectfully requests that his Motion Under Informa Pauperis Provision For Free Transcript Of All Proceedings Had Hereof be granted allowing petitioner to be afforded the necessary record without the prepayment of any costs.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Affiant and Petitioner

[*Duly sworn to by Robert Newton Gardner, Jr. jurat omitted in printing (all in italics)*]

[Affidavit of Service by Mail (omitted in printing)]

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

No. 5101

[File endorsement omitted in printing]

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.,
For Writ of Habeas Corpus

ORDER DENYING MOTION—March 1, 1967

Petitioner seeks a copy of the transcript of proceedings had before Honorable Timothy I. O'Reilly. These are sought as "evidence to be contained in the record for review in the Supreme Court of the State of California by avenue of Certiorari or Habeas Corpus."

The petitioner may present all matters which were involved in his hearing before Judge O'Reilly by filing a new petition for Writ of Habeas Corpus before a Court having jurisdiction of his matter (including but not limited to the California Supreme Court). His request for relief by such a Court will not be affected by the action of Judge O'Reilly and aside from a statement in his petition that he has sought relief in this Court, with the date thereof stated, none of the proceedings here will be of concern to the Court before whom the new petition is presented. If that Court for some reason of its own wants a copy of the record, it can order one prepared.

There is no appeal from a denial of a petition for Writ of Habeas Corpus.

The petition is DENIED.

Dated: March 1, 1967.

/s/ Richard J. Harris
Judge of the Superior Court
Dept. II

Certified copy sent to Petitioner. 1 copy to Dist. Atty. 1 copy to H. V. Field, Superintendant CMC 3-1-67 MC

ORIGINAL

Mar. 28, 1967, Denied, Ford, Coby, Moss

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ——

2 Civ 31580

[File endorsement omitted in printing]

ROBERT NEWTON GARDNER, JR., PETITIONER

- *vs* -

SUPERIOR COURT OF THE STATE OF CALIFORNIA, In and for the County of San Luis Obispo, RESPONDENT

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN LUIS OBISPO, CASE No. 5101—Filed March 14, 1967

* * * *

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ——

Case No. 2/Crim. ——

ROBERT NEWTON GARDNER, JR., PETITIONER

HAROLD V. FIELD, Superintendent, California Mens Colony —East, Los Padres, California, etc., et al, RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE PRESIDING JUSTICE AND THE ASSOCIATE JUSTICES IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, LOS ANGELES, CALIFORNIA.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN LUIS OBISPO, CASE NO. 5101

The petition of ROBERT NEWTON GARDNER, JR. respectfully shows:

I

That this Court has jurisdiction to issue its writ of certiorari under the California Code of Civil Procedure, section 1068. Further jurisdiction is conferred upon this Court under the Due Process and Equal Protection Clauses of both the California and Federal Constitutions.

II

That your petitioner, ROBERT NEWTON GARDNER, JR., is a state prisoner presently incarcerated in the California Mens Colony—East, Los Padres, California, within the jurisdiction of this Court, and as such a prisoner has a federal civil and constitutional right to prepare and prosecute petitions for writ of habeas corpus. That right includes a transcript of any evidentiary hear-

ing had in a habeas corpus proceeding, which would prove petitioner's claims and aid him in presenting his cause for review by habeas corpus or by certiorari in the higher courts.

III

On February 23, 1967, the petitioner presented his MOTION UNDER INFORMA PAUPERIS PROVISIONS FOR FREE TRANSCRIPTS OF ALL PROCEEDINGS HAD HEREOF to the Superior Court, in and for the County of San Luis Obispo, Case No. 5101. On March 1, 1967, that court issued its Order denying the aforesaid Motion and on March 7, 1967, the petitioner was notified of said denial. The Superior Court dénied the above Motion for Free Transcripts of the evidentiary hearing had on the ground that "There is no appeal from a denial of a petition for wrti of habeas corpus." And ". . none of the proceedings here will be of concern to the Court before whom the new petition is presented." Petitioner seeks certiorari to this Order Denying Motion from the Superior Court of San Luis Obispo County.

IV

On September 17, 1966, petitioner presented to the San Luis Obispo Superior Court his Petition for Writ of Mandamus or Injunction, No. 5101. On October 30, 1966, petitioner presented his Petition for Writ of Habeas Corpus, No. 5170.

Upon motion by petitioner the above entitled matters were ordered consolidated for hearing. After several prehearing actions and continuances the hearing came on the first day of February, 1967, in Department I of the Superior Court of San Luis Obispo, Judge Timothy I. O'Reilly, presiding.

Prior to the taking of evidence the court ruled that the Petition in No. 5101, although labeled a Petition for Writ of Mandamus or Injunction, was and is in fact a Petition for Writ of Habeas Corpus.

During the hearing the court took evidence, both oral and documentary. At the conclusion of the taking of evidence, the matter was submitted with authorities from the petitioner and the respondents.

The court after reviewing the evidence and having read the authorities ruled adversely to petitioner on February 15, 1967. It is assumed by petitioner, due to statements made by the court during hearing, that the basis for the court's ruling was the State Supreme Court case *In re Chessman*, 44 Cal. 2d 23.

Petitioner does not complain of the full hearing accorded him by the Superior Court. The hearing was a fair hearing and it is the contention of the petitioner that the evidence adduced at that evidentiary hearing will prove his cause and substantiate his claims.

Petitioner contends that while the Superior Court's ruling may comply with *In re Chessman*, supra, it is not in accord with the recent decisions and trend of the Supreme Court of the United States in that Court's expanded scope of the rights secured by the Fourteenth Amendment.

The transcript of the above mentioned evidentiary hearing is necessary as an exhibit and as reference to the full hearing had in the matter and essential to petitioner as reference in the aid of the preparation for a Petition for Writ of Certiorari and Habeas Corpus which he is desirous of filing in the Supreme Courts of the United States and the State of California. Moreover, the transcripts of that hearing is necessary to petitioner so that he may properly present his claims to those Courts and to allow those Courts to review the entire record and the evidence adduced therein so they may properly adjudicate the issues and review the Superior Court's decisions regarding the federal questions presented by the petitioner.

Petitioner contends that the transcript of the hearing had in the above matter will clearly prove the following:

1. That the present interpretations of the *In re Chessman* case now causes an abridgement of petitioner's federally protected constitutional rights and should be overruled.

2. That there was and is now an invasion of the federal constitutional rights of the petitioner.

3. That there was and is now a flagrant discrimination causing a denial of equal privileges to state prisoners who seek to lawfully petition the courts.

4. That state prisoners have been and are now being punished for exercising or attempting to exercise their right to lawfully seek review of their case or to petition the courts seeking redress.

5. That the acts of the respondents as spelled out in the hearing show an infringement upon the petitioner's right of access to the courts.

6. That the record will show that petitioner does not have meaningful access to the courts and reasonable access to law books, rules, and other necessary legal material sufficient to meet the requirements of the Fourteenth Amendment.

V

The transcripts of the evidentiary hearing had in this matter are necessary to the petitioner. Other petitioners with money under like circumstances would be free to purchase the transcripts in question. The petitioner is being denied the necessary and important transcripts solely due to his indigency.

VI

The Order of the Superior Court denying petitioner's Motion for Free Transcripts of the Evidentiary Hearing had is not in accord with the United States Supreme Court's mandate spelled out in *Long* vs. *Iowa*, No. 77, October Term, 1966, decided Dec. 5, 1966, 35 LW 4046 (BNA United States Law Week) and *Smith* vs. *Bennett*, 365 U.S. 708. And see other authorities cited in MOTION UNDER IN FORMA PAUPERIS PROVISION FOR FREE TRANSCRIPTS OF ALL PROCEEDINGS HAD HEREOF, pages 6, 7, 8, 9, and 10 of that Motion.)

VII

There is no appeal from the Order of the Superior Court denying motion for free transcripts. No appeal is available here from any subsequent order. That petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law and the petition for writ of certiorari sought here is the proper relief and remedy under the special circumstances of this case.

VIII

Though the Superior Court had fundamental jurisdiction, it acted in excess of its jurisdiction by the issuance of the non-appealable order involving the federal constitutional rights of petitioner. The order of the Superior Court was in excess of its jurisdiction and certiorari is sought to annul that unconstitutional proceeding and order denying petitioner his federally protected Fourteenth Amendment rights.

IX

WHEREFORE, petitioner prays that the Honorable Court issue its Writ of Certiorari to the Superior Court, in and for the County of San Luis Obispo, Case No. 5101, and thereby order the record of that court brought up for examination. That after an examination of that record this Court issue its order to annul the unconstitutional action of the court below.

Petitioner further prays for such other and further relief as to this Court may seem just in the safeguarding of the petitioner's constitutional rights.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner in propria persona

[*Duly sworn to by Robert Newton Gardner, Jr. jurat omitted in printing (all in italics)*]

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ——

Case No. 2/Crim. ——

ROBERT NEWTON GARDNER, JR., PETITIONER

- vs -

HAROLD V. FIELD, Superintendent, etc., et al,
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner ROBERT NEWTON GARDNER, JR. asks leave to file the attached Petition For Writ Of Certiorari without the prepayment of costs and to proceed in forma pauperis. The petitioner's affidavit in support of this petition is attached hereto.

DATED: March 11, 1967, at Los Padres, California.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner in propria persona

AFFIDAVIT IN SUPPORT OF PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

I, ROBERT NEWTON GARDNER, JR., being aware of the penalty of perjury and according to law, depose and say that I am the petitioner in the above entitled cause and, in support of my application for leave to proceed without being required to prepay costs and fees, state:

1. I am a citizen of the United States and the State of California.

2. Because of my poverty I am unable to pay the cost of said cause.

3. I am unable to give security for same.

4. I believe that I am entitled to the redress and relief that I seek in said cause.

5. I am a prisoner confined in the California Mens Colony—East, Las Padres, California, and have been a prisoner in California for over the past seven years.

6. The nature of said cause is briefly stated as follows: I have been denied needed transcripts of an evidentiary hearing had in a habeas corpus proceeding solely due to my indigency. The denial of those transcripts foreclose me a full and adequate presentation of my cause to the Federal Courts and thereby deprives me of my federally protected Fourteenth Amendment Rights. This is a Petition for Writ of Certiorari to the court below and wherein petitioner seeks an Order to annul the acts of the lower court.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner in propria persona

[*Duly sworn to by Robert Newton Gardner, Jr. jurat omitted in printing (all in italics)*]

[Affidavit of Service by Mail (omitted in printing)]

62

THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLANT DISTRICT DIVISION THREE

MINUTES OF MARCH 23, 1967

Civil No. 31580

GARDNER

vs.

SUPERIOR COURT OF SAN LUIS OBISPO

THE COURT:

Petition for writ of certiorari denied.

* * * *

Permission to File Granted

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

2 Civ 31580

[File endorsement omitted in printing]

ROBERT NEWTON GARDNER, JR., PETITIONER

-vs-

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
In and for the County of San Luis Obispo, RESPONDENT

PETITION FILED LATE

PETITION FOR HEARING RE: DENIAL OF CERTIORARI, DCA 2ND NO. 2/CIV. 31580 DIRECTED TO THE SUPERIOR COURT IN AND FOR THE COUNTY OF SAN LUIS OBISPO, CASES 5101 AND 5170

ROBERT NEWTON GARDNER, JR.
A-28381
California Mens Colony
East Facility
Los Padres, California 93401
Petitioner in Propria Persona

DECIDED 3-23-67

HEARING DUE 4-22-67—Ext. to 5/22/67

• • • •

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Case No. ———

ROBERT NEWTON GARDNER, JR., PETITIONER

- *vs* -

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
In and for the County of San Luis Obispo, RESPONDENT

PETITION FOR HEARING

PETITION FOR HEARING RE: DENIAL OF CERTIORARI, DCA 2ND CASE NO. 31580, DIRECTED TO THE SUPERIOR COURT IN AND FOR THE COUNTY OF SAN LUIS OBISPO, CASES 5101 AND 5170

TO THE HONORABLE CHIEF JUSTICE ROGER J. TRAYNOR AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA.

The petition of ROBERT NEWTON GARDNER, JR., respectfully shows:

I

That this Court has jurisdiction to grant a hearing in the above entitled matter under Rules 28 and 29 of the California Appellate Rules and the California Code of Civil Procedure, Section 1068, et seq. Further jurisdiction is conferred upon this Court under the Due Process and Equal Protection Clauses of both the California and the United States Constitutions.

II

That your petitioner, ROBERT NEWTON GARDNER, JR., is a state prisoner, proceeding in propria persona and informa pauperis, presently incarcerated in the Cali-

fornia Mens Colony, East Facility, Los Padres, California, within the jurisdiction of this Court, and as such a prisoner has a federal civil and constitutional right to prepare and prosecute petitions for writ of habeas corpus. That right includes a transcript of any evidentiary hearing had in a habeas corpus proceeding, which would prove petitioner's claims and aid him in presenting his cause for review by habeas corpus or certiorari in the higher courts.

III

On February 23, 1967, the petitioner presented his MOTION UNDER INFORMA PAUPERIS PROVISIONS FOR FREE TRANSCRIPTS OF ALL PROCEEDINGS HAD HEREOF to the Superior Court, in and for the County of San Luis Obispo, Case No. 5101. On March 1, 1967, that court issued its order denying the aforesaid Motion and on March 7, 1967, that court notified petitioner of said denial.

The Superior Court denied the above Motion for Free Transcripts of the evidentiary hearing had on the ground that "There is no appeal from a denial of a petition for writ of habeas corpus." And ". . . none of the proceedings here will be of concern to the Court before whom the new petition is presented." Petitioner sought certiorari in the District Court of Appeal, Second Appellate District, Case No. 2/Crim. 13314, to this Order Denying Motion from the Superior Court of San Luis Obispo County, Case No. 5101 and 5170. On March 23, 1967, the District Court of Appeal issued its Post Card Denial No. 31580, denying petition for writ of certiorari without opinion, findings of fact, or conclusions of law. Petition for Rehearing was not sought in accordance with Rules 27 (a) and 56 of the California Appellate Rules.

Petitioner seeks a petition for hearing in this Court to the orders denying free transcripts and denying certiorari.

IV

On September 17, 1966, petitioner presented to the San Luis Obispo Superior Court his Petition for Writ of Man-

damus or Injunction, No. 5101. On October 30, 1966, petitioner presented his Petition for Writ of Habeas Corpus, No. 5170.

Upon Motion by petitioner the above entitled matters were ordered consolidated for hearing. After several pre-hearing actions and continuances the hearing came on the first day of February, 1967, in Department I of the Superior Court of San Luis Obispo County, Judge Timothy I. O'Reilly presiding.

Prior to the taking of evidence the Court ruled that the Petition in No. 5101, although labeled a Petition for Writ of Mandamus or Injunction, was and is in fact a Petition for a Writ of Habeas Corpus.

During the hearing the court took evidence, both oral and documentary. At the conclusion of the taking of evidence, the matter was submitted with authorities from the petitioner and the respondents.

The court after reviewing the evidence and having read the authorities ruled adversely to petitioner on February 15, 1967. It is assumed by petitioner, due to statements made by the court during hearing, that the basis for the court's ruling was the State Supreme Court case *In re Chessman*, 44 Cal. 2d 23.

Petitioner does not complain of the full hearing accorded him by the Superior Court. The hearing was a fair hearing and it is the contention of the petitioner that the evidence adduced at that hearing will prove his cause and substantiate his claims.

Petitioner contends that while the Superior Court's ruling may comply with *In re Chessman*, supra, it is not in accord with the recent decisions and trend of the Supreme Court of the United States in that Court's expanded scope of rights secured by the Fourteenth Amendment to the Constitution.

The transcripts of the above mentioned evidentiary hearing as an exhibit and as reference to the evidence taken in the matter . . . is essential to petitioner as he desires to present the same matter to an appellate court and the federal courts. Those courts would be interested in the transcript and may not need any additional testimony. Moreover, petitioner needs the transcripts so that

he may be able to submit the matter on the of the evidentiary hearing had in the matter. Furthermore, the transcript of that hearing is necessary to the petitioner so so that he may properly present his claims to those courts and to allow those courts to review the entire record and the evidence adduced therein so they may properly adjudicate the the issues and review the Superior Court's decisions regarding the federal questions therein presented by the petitioner.

Petitioner alleges that the transcript of the hearing had in the above matter will clearly prove the following:

1. That the present expanded interpretations of the *In re Chessman* case now causes an abridgement of petitioner's federally protected rights as secured by the United States Constitution and as such should be overruled.
2. That there was and is now an invasion of the federal constitutional rights of the petitioner.
3. That there was and now is a flagrant discrimination causing a denial of equal protection and privileges to state prisoners who seek to lawfully petition the courts.
4. That state prisoners have been and are now being punished for exercising or attempting to exercise their right to lawfully seek review of their case or to petition the courts seeking redress from unconstitutional acts.
5. That the acts of the respondents as spelled out in the evidentiary hearing show an infringement upon the rights of petitioner and deny him adequate and meaningful access to the courts.
6. That the record will show that petitioner and others similarly situated do not have meaningful aecess to the courts and reasonable access to law books, rules, and other necessary legal materials sufficient to meet the requirements of the Fourteenth Amendment of the United States Constitution.

V

As heretofore shown the transcripts of the evidentiary hearing had in the matter are necessary to the petitioner. Other petitioners with money under like circumstances would be free to purchase the transcripts in question. The petitioner is being denied the necessary and available transcripts solely due to his indigency.

VI

The order of the Superior Court denying petitioner's Motion for Free Transcripts of the evidentiary hearing had is not in accord with the United States Supreme Court mandate spelled out in *Long* vs. *Iowa*, No. 77, October Term, 1966, decided December 5, 1966, 35 Law Week 4046 (B.N.A. United States Law Week) and *Smith* vs. *Bennett*, 365 U.S. 708. And see other authorities cited in MOTION UNDER INFORMA PAUPERIS PROVISIONS FOR FREE TRANSCRIPTS OF ALL PROCEEDINGS HAD HEREOF, pages 6 to 10 of that Motion. (See Exhibit 1 annexed hereto.)

VII

There is no appeal from the Order of the Superior Court denying the motion for free transcripts. No appeal is available here from any subsequent order. That petitioner does not have a plain, speedy and adequate remedy in the ordinary course of law and the petition for writ of certiorari that was sought, in the District Court of Appeal was the only proper remedy or avenue open to petitioner. The Petition for Hearing here sought is the proper remedy and relief under the specific circumstances of this case.

VIII

Though the Superior Court had fundamental jurisdiction, it acted in excess of its jurisdiction by the issuance of the non-appealable Order involving the federal constitutional rights of the petitioner. The Order of the Superior Court denying the petitioner his needed transcripts was in excess of its jurisdiction and certiorari was sought prior to the present petition for hearing seeking to annul that unconstitutional proceeding and Order denying petitioner his Fourteenth Amendment rights.

IX

Petitioner submits to this Court a Group of Exhibits, numbered 1 through 10, which consists of all actions had in this matter excluding only the transcripts in questions.

This group of exhibits is the personal file of the petitioner and it is to be returned to the petitioner after this Court issues its Order calling up the records of the court below or after this Court denies the present petition for hearing as the group of exhibits will be needed to present to the United States Supreme Court on certiorari. This Petition is being presented within thirty days of the Order denying Certiorari.

X

WHEREFORE, petitioner prays that the Honorable Court grant the Petition for Hearing directed to the District Court of Appeal, Second Appellate District, Case No. 31580, and/or the Superior Court, County of San Luis Obispo, Case No. 5101, and thereby order the records of either or both courts brought up for review. That after a review of that record this Court issue its Order to annul the unconstitutional action of the court below.

Petitioner further prays for such other and further relief as to this Court may seem just in the safeguarding of the petitioner's constitutional rights.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner in propria persona

[*Duly sworn to by Robert Newton Gardner, Jr. jurat omitted in printing (all in italics)*]

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Case No. ———

ROBERT NEWTON GARDNER, JR., PETITIONER

-*vs*-

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
In and for the County of San Luis Obispo, RESPONDENT

PETITION FOR HEARING

PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner ROBERT NEWTON GARDNER, JR., asks leave to file the attached Petition For Hearing without the prepayment of costs and to proceed in forma pauperis. The petitioner's Affidavit in support of this petition is attached hereto.

DATED: April 17th, 1967, Los Padres, California.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner in propria persona

AFFIDAVIT IN SUPPORT OF PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

I, ROBERT NEWTON GARDNER, JR., being aware of the penalty of perjury and according to law, depose and say that I am the petitioner in the above entitled

cause and, in support of my application for leave to proceed without being required to prepay costs and fees, state:

1. I am a citizen of the State of California and the United States.
2. Because of my poverty I am unable to pay the cost of said cause.
3. I am unable to give security for same.
4. I believe that I am entitled to the redress and relief that I seek in said cause.
5. I am a prisoner confined in the California Mens Colony, East Facility, Los Padres, California, and have been a prisoner in California for over the past 7 years.
6. The nature of said cause is briefly stated as follows:

I have been denied needed transcripts of evidentiary hearing had in habeas corpus proceedings solely due to my indigency. The denial of said transcripts deny me a full and adequate preparation and presentation of my cause to the federal courts and thereby deprive me of my federally protected Fourteenth Amendment Rights. This is a Petition For Hearing in the matter of the denial of my Petition for writ of Certiorari directed to the Superior Court and wherein petitioner seeks and Order to annul the action of that lower court.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner in propria persona

[*Duly sworn to by Robert Newton Gardner, Jr. jurat omitted in printing (all in italics)*]

[Affidavit of Service by Mail (omitted in printing)]

ORDER DUE
May 22, 1967

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL
2nd District, Division 3, Civil No. 31580

Filed, May 10, 1967, William I. Sullivan, Clerk,
By J. M. R., S. F. Deputy

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

GARDNER, JR.

v.

THE SUPERIOR COURT OF THE COUNTY OF SAN LUIS OBISPO

Petition for hearing DENIED.

/s/ Peters
Acting Chief Justice

MENC

SUPREME COURT OF THE UNITED STATES

No. 176 Misc., October Term, 1967

ROBERT NEWTON GARDNER, JR., PETITIONER

v.

CALIFORNIA

On petition for writ of Certiorari to the Superior Court of the State of California, County of San Luis Obispo.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1399 and placed on the summary calendar.

May 6, 1968

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 318673 1st